Supreme Court, U.S.
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No. 01-521

IN THE

Supreme Court of the United States

REPUBLICAN PARTY OF MINNESOTA, *et al.*,

Petitioners,

v.

VERNA KELLY, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF THE AMERICAN BAR ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENTS

ROBERT E. HIRSHON
Counsel of Record
American Bar Association
750 N. Lake Shore Drive
Chicago, IL 60611
(312) 988-5000

Counsel for Amicus Curiae

Of Counsel:

REAGAN WM. SIMPSON
WARREN S. HUANG

172372

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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INTEREST OF THE *AMICUS CURIAE*

The American Bar Association (ABA), with more than 408,000 members, is the leading national membership organization of the legal profession.[1] Its members come from each of the 50 states, the District of Columbia, and the U.S. territories. Membership is voluntary and includes attorneys in private practice, government service, corporate law departments, and public interest organizations, as well as legislators, law professors, law students, and non-lawyer associates in related fields.[2]

At issue in this case is Minnesota's "announce clause." As interpreted and enforced by Minnesota, the announce clause has the same scope as the corresponding provision in the 1990 ABA Model Code of Judicial Conduct. Both provisions prohibit judicial candidates from committing or appearing to commit themselves on cases, controversies, or issues likely to come before their courts. Thus, the ABA has an interest in defending the constitutionality of these provisions and their applicability to judicial campaigning.

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1. This brief has not been authored as a whole or in part by counsel for a party. No monetary contribution has been made to the preparation or submission of this brief other than the *amicus curiae*, its members, or its counsel. Consent to this brief has been given by all parties and is on file with the Court.

2. Neither this brief nor the decision to file this brief should be interpreted to reflect the views of any judicial member of the ABA. No member of the Judicial Division Council has participated in the adoption or endorsement of the positions in this brief. This brief was not circulated to any member of the Judicial Division Council prior to filing.

SUMMARY OF THE ARGUMENT

Minnesota's announce clause, as definitively interpreted by the Minnesota Supreme Court, has the same scope as the corresponding provision of the ABA Model Code of Judicial Conduct. The ABA provision, which prohibits judicial candidates from committing or appearing to commit themselves to matters likely to come before the courts, has the long-standing support of a broad spectrum of the American legal profession. The ABA Code's prohibition is narrowly tailored to achieve three compelling state interests – namely, maintaining judicial independence and impartiality, preserving public confidence in the judiciary, and guaranteeing due process to litigants.

ARGUMENT

With increasing frequency, constitutional challenges are being made to legitimate attempts to balance the electorate's right to receive information about candidates for elected judicial office and the need to ensure both the appearance and the reality of an impartial judiciary. The petitioners and respondents have identified certain cases that address challenges to announce clauses,[3] while many other cases

3. *See Buckley v. Ill. Judicial Inquiry Bd.*, 997 F.2d 224, 231 (7th Cir. 1993) (declaring announce rule promulgated by Illinois Supreme Court to be unconstitutional); *Stretton v. Disciplinary Bd.*, 944 F.2d 137, 138 (3d Cir. 1991) (upholding constitutionality of announce clause in Pennsylvania Code of Judicial Conduct); *Beshear v. Butt*, 863 F. Supp. 913, 917-18 (E.D. Ark. 1994) (declaring announce clause in Arkansas Code of Judicial Conduct to be unconstitutional); *Am. Civil Liberties Union v. Fla. Bar*, 744 F. Supp. 1094, 1099-1100 (N.D. Fla. 1990) (granting preliminary injunction (Cont'd)

address similar issues concerning limits on judicial campaigning.[4]

(Cont'd)
enjoining enforcement of announce clause of Florida Code of Judicial Conduct); *Deters v. Judicial Retirement & Removal Comm'n*, 873 S.W.2d 200, 203-05 (Ky. 1994) (upholding constitutionality of revised announce clause of Kentucky Code of Judicial Conduct); *J.C.J.D. v. R.J.C.R.*, 803 S.W.2d 953, 956-57 (Ky. 1990) (declaring announce clause in Kentucky Code of Judicial Conduct to be unconstitutional); Petition for Writ of Certiorari at 16-18; Respondent's Brief in Opposition at 11-15; Petitioner's Reply at 5-7.

4. *See, e.g., Morial v. Judiciary Comm'n*, 565 F.2d 295, 306-07 (5th Cir. 1977) (upholding constitutionality of provisions of Louisiana statute and Code of Judicial Ethics requiring judges to resign from bench prior to running for elective non-judicial offices); *Weaver v. Bonner*, 114 F. Supp. 2d 1337, 1341-43 (N.D. Ga. 2000) (declaring provision of Georgia Code of Judicial Conduct prohibiting false statements to be unconstitutional); *Zeller v. Fla. Bar*, 909 F. Supp. 1518, 1529 (N.D. Fla. 1995) (granting preliminary injunction enjoining enforcement of provisions of Florida Code of Judicial Conduct regulating expenditure and solicitation of judicial campaign funds and solicitation of public support for judicial candidates); *Ackerson v. Ky. Judicial Retirement & Removal Comm'n*, 776 F. Supp. 309, 314-16 (W.D. Ky. 1991) (upholding constitutionality of provision of Kentucky Code of Judicial Conduct prohibiting promises of conduct and statements regarding issues likely to come before court); *Clark v. Burleigh*, 841 P.2d 975, 988 (Cal. 1992) (upholding constitutionality of California statute limiting judicial candidate's statement for inclusion in voter's pamphlet to recitation of candidate's own personal background and qualifications and prohibiting reference to other judicial candidates and other candidates' qualifications, character, or activities); *In re Buckson*, 610 A.2d 203, 222-25 (Del. Ct. Judiciary 1992) (upholding constitutionality of provisions of Delaware Code of Judicial Conduct requiring judges to resign from bench prior to running for elective non-judicial offices and prohibiting (Cont'd)

I.

THE RELATIONSHIP OF MINNESOTA'S ANNOUNCE CLAUSE AND THE ABA MODEL CODE OF JUDICIAL CONDUCT

Minnesota's "announce clause" provides: "A candidate for a judicial office . . . shall not . . . announce his or her views on disputed legal or political issues." MINN. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(i). Like many states, Minnesota patterned its Code of Judicial Conduct on the ABA Model Code of Judicial Conduct. Minnesota's announce clause is identical to its counterpart in the 1972 ABA Model Code of Judicial Conduct. *See* ABA MODEL CODE OF JUD. CONDUCT Canon 7(B)(1)(c) (1972).[5] The current ABA Model Code provision on this subject contains somewhat different

(Cont'd)
judges from attending political gatherings); *Summe v. Judicial Retirement & Removal Comm'n*, 947 S.W.2d 42, 47-48 (Ky. 1997) (upholding constitutionality of provision of Kentucky Code of Judicial Conduct prohibiting misrepresentations); *In re Chmura*, 608 N.W.2d 31, 38-43 (Mich. 2000) (declaring provision of Michigan Code of Judicial Conduct prohibiting false statements to be unconstitutional but upholding constitutionality of narrower construction of provision); *In re Broadbelt*, 683 A.2d 543, 552 (N.J. 1996) (per curiam) (upholding constitutionality of provisions of New Jersey Code of Judicial Conduct prohibiting judges from commenting on pending proceedings and from lending prestige of their office to advance private interests of others); *In re Fadeley*, 802 P.2d 31, 44 (Or. 1990) (per curiam) (upholding constitutionality of Oregon Code of Judicial Conduct prohibiting judges from personally soliciting campaign contributions).

5. A survey of the different restrictions on judicial election speech that the states have adopted is set forth in the Appendix to this brief.

language, reading in relevant part that a judicial candidate "shall not . . . make statements that commit or appear to commit the candidate with respect to cases, controversies or issues that are likely to come before the court." ABA MODEL CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii) (1990).

As interpreted by the Eighth Circuit, the Minnesota clause "prohibits candidates only from publicly making known how they would decide issues likely to come before them as judges"[6] — the same scope as current ABA Canon 5(A)(3)(d)(ii). Subsequently, the Minnesota Supreme Court issued an order agreeing with that interpretation. *See In re Code of Judicial Conduct*, No. C4-85-697 (Minn. Jan. 29, 2002) ("the announce clause . . . shall be enforced in accordance with the interpretation of that clause by the United States Court of Appeals for the Eighth Circuit in *Republican Party of Minnesota v. Kelly*").

Minnesota's announce clause has the same scope as the corresponding provision in the 1990 ABA Model Code — namely, it prevents judicial candidates from seeking political support on the basis of commitments or apparent commitments on how they would decide cases if elected.

6. *Republican Party of Minn. v. Kelly*, 247 F.3d 854, 881-82 (8th Cir. 2001).

II.

THE ABA MODEL CODE OF JUDICIAL CONDUCT REFLECTS THE AMERICAN LEGAL PROFESSION'S LONG-STANDING VIEW THAT JUDGES SHOULD NOT CAMPAIGN ON HOW THEY WOULD DECIDE ISSUES, IF ELECTED

The ABA, acting on behalf of the legal profession, has for more than three-quarters of a century promoted model regulations that prohibit judicial candidates from seeking election on the basis of commitments to render decisions in future cases. As early as 1924, its Model Canons of Judicial Ethics cautioned that a candidate for judicial office "should not announce in advance his conclusions of law on disputed issues to secure class support." ABA CANONS OF JUD. ETHICS Canon 30 (1924).

A half-century later, a revised Model Code retained much the same restriction by prohibiting judicial candidates from expressing views on disputed legal or political issues. ABA MODEL CODE OF JUD. CONDUCT Canon 7(B)(1)(c) (1972). The current Model Code narrowed the limitation to "cases, controversies or issues that are likely to come before the court." ABA MODEL CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii) (1990).

The history of what became the 1990 Model Code began with a survey of authorities in the field of judicial ethics conducted by the Judicial Code Subcommittee of the ABA's Standing Committee on Ethics and Responsibility. The Subcommittee received assistance from many leading attorneys, judges, legal scholars, and liaisons from ABA entities and other groups with a particular interest in judicial

ethics. Included among those who provided comments were representatives of the ABA Judicial Administration Division Coordinating Committee, the Committee on Codes of Conduct of the Judicial Conference of the United States, the Center for Judicial Conduct Organizations, the American Judicature Society, the Josephson Institute for the Advancement of Ethics, and the Conference of Chief Justices.

The Judicial Code Subcommittee compiled extensive background material, including codes from every United States jurisdiction, law review articles, statistical studies and other research material from the literature of judicial ethics and judicial discipline. Included among those materials were unpublished papers and ongoing research of individuals active in the field of judicial ethics and discipline. The Subcommittee received particular assistance from advisory opinions on judicial ethics that highlighted the problems encountered most often by judges. Finally, the Subcommittee consulted the codes of judicial conduct recently adopted in several jurisdictions and the study materials developed by the drafting committees in those jurisdictions.

In 1987, the Judicial Code Subcommittee circulated a questionnaire with specific questions concerning each section of the seven Canons of the 1972 Code and the Compliance section. The questionnaire was sent to federal and state judges in every jurisdiction, all state judicial conduct organizations, the Conferences of the ABA Judicial Administration Division, the American Judicature Society, and many other interested groups and individuals.

In 1988, the Subcommittee held public hearings at the ABA Midyear and Annual Meetings. Those hearings were attended by members of the judiciary, representatives of

judicial conduct organizations, representatives of a variety of public groups and individuals responding to a general invitation to the public to present oral and written comments to the Subcommittee. All questionnaire responses and other comments were given careful consideration, and many suggestions received were incorporated in the May 1, 1989 Discussion Draft.[7]

More than 4,800 copies of the Discussion Draft, along with a request for comments and suggestions, were distributed to: (1) those to whom the original questionnaire was sent (including state and specialty bar associations); (2) all ABA entities; and (3) many additional federal and state judges. Formal public hearings were held at the 1989 ABA Annual Meeting and, in September 1989, in San Francisco and Washington, D.C. Informational programs on the Discussion Draft were presented to the May 1989 Conference on Professional Responsibility, the Sixth Circuit Judicial Conference, the July 1989 meeting of the Conference of Chief Justices, several state bar meetings, and the meeting of the ABA Judicial Administration Division Coordinating Committee. After that extensive process, the ABA adopted the current 1990 ABA Model Code of Judicial Conduct.

The 1990 Model Code contains a revised version of the announce clause that had appeared in its predecessor, the 1972 Model Code. The 1990 revision to that clause was explained in an earlier Discussion Draft, which noted that the phrase "announce his views on disputed legal or political

7. JUDICIAL CODE SUBCOMM. OF THE ABA STANDING COMM. ON ETHICS & PROF. RESPONSIBILITY, DRAFT REVISIONS TO THE ABA CODE OF JUDICIAL CONDUCT (May 1, 1989).

issues" was "an overly broad restriction on speech."[8] What replaced that phrase was the "more specific language prohibiting the making of any statements that appear improperly to commit the candidate with respect to matters likely to come before the candidate's court."[9]

Thus, the provision of the ABA Model Code that corresponds with Minnesota's announce clause was narrowly drawn after an extensive deliberative process that included a broad spectrum of the American legal profession.

8. *Id.* at 55-56 (May 1, 1989); *see* LISA L. MILORD, THE DEVELOPMENT OF THE ABA JUDICIAL CODE 50 (1992); M. Peter Moser, *The 1990 ABA Code of Judicial Conduct*, 4 GEO. J. LEGAL ETHICS 731, 765 nn.127 & 129 (1991) (noting eompeting arguments over the language adopted); *see also* Robert M. Brode, Note, Buckley v. Illinois Judicial Inquiry Board *and* Stretton v. Disciplinary Board of the Supreme Court: *First Amendment Limits on Ethical Restrictions of Judicial Candidates' Speech*, 51 WASH. & LEE L. REV. 1085, 1117-21 (1994) (discussing the change to this provision in the 1990 Model Code and predicting that it would pass muster under the Seventh Circuit's analysis in *Buckley*).

9. ABA STANDING COMM. ON ETHICS & PROF. RESPONSIBILITY, REPORT TO THE HOUSE OF DELEGATES NO. 112 (Aug. 1990); *see* M. Peter Moser, *supra* note 7, at 765 n.127. The only other change ultimately made to the provision was to replace the phrase "cases or controversies" with the phrase "cases, controversies or issues." M. Peter Moser, *supra*.

III.

MINNESOTA'S NARROWLY TAILORED RESTRICTION SERVES COMPELLING STATE INTERESTS

The state "may ... regulate the content of constitutionally protected speech in order to promote a compelling interest if it chooses the least restrictive means to further the articulated interest." *Sable Communications of Cal., Inc. v. Fed. Communications Comm'n*, 492 U.S. 115, 126 (1989). Under that standard, Minnesota's announce clause, as interpreted by the Minnesota Supreme Court and the Eighth Circuit, is constitutional.

A. Minnesota's Clause Is Narrowly Tailored

Minnesota's clause proscribes a narrow range of campaign speech by judicial candidates — namely, their statement of how they would decide issues likely to come before the courts. That was the interpretation given to the clause by the Eighth Circuit. *Republican Party of Minn. v. Kelly*, 247 F.3d 854, 881-82 (8th Cir. 2001). By recent order, the Minnesota Supreme Court expressly adopted the Eighth Circuit's interpretation. *In re Code of Judicial Conduct*, No. C4-85-697 (Minn. Jan. 29, 2002).

The narrow restriction now imposed by Minnesota received support even from courts that have invalidated broader restrictions on judicial campaign speech. For example, in *Deters v. Judicial Retirement & Removal Commission*, 873 S.W.2d 200, 203-05 (Ky. 1994), the Kentucky Supreme Court upheld language identical to the 1990 ABA Model Code, while earlier invalidating the formulation of the announce clause in the 1972 Model Code

in *J.C.J.D. v. R.J.C.R.*, 803 S.W.2d 953, 956-57 (Ky. 1991). Similarly, in *Buckley v. Illinois Judicial Inquiry Board*, 997 F.2d 224, 230 (7th Cir. 1993), the Seventh Circuit struck down the language identical to the 1972 Model Code, yet the court recognized that "promises to rule in particular ways in particular cases or particular types of cases ... are within the state's regulatory power." Further, in *American Civil Liberties Union of Florida, Inc. v. Florida Bar*, 744 F. Supp. 1094, 1097 (N.D. Fla. 1990), the court again held that the announce clause in the 1972 Model Code was too broad, but the court also noted that a judicial candidate "'cannot, consistent with the proper exercise of his judicial powers, bind himself to decide particular cases in order to achieve a given programmatic result.'" *Id.* (quoting *Morial v. Judiciary Comm'n*, 565 F.2d 295, 305 (5th Cir. 1977)).

As interpreted, the clause at issue allows judicial candidates to discuss a myriad of proper topics. As in all other states, judicial candidates in Minnesota are free to discuss their qualifications, their opponents' qualifications, their general approach to judicial decisionmaking, and their views on critical issues that relate to their duties of judicial administration, such as court backlog, hiring of court personnel, the need for additional resources, efficiency of the courts, or jury selection and service. *See Editorial: What Judicial Candidates May Say*, AM. JUDICATURE, at 4 (July-Aug. 2000). Candidates are prohibited only from committing or appearing to commit to how they would decide future matters before their courts.

The prohibited statements do not contribute to an informed electorate, as petitioners contend. *See* Brief for Petitioners Republican Party of Minnesota, *et al.* at 29-31; Brief for Petitioners Gregory F. Wersal, *et al.* at 35-38.

If judicial candidates committed themselves to future decisions, they would be subject to disqualification or recusal from making those decisions once they were elected; and any decisions rendered in conformity with prior campaign commitments would likely be subject to challenge on due-process grounds. *See* Randall T. Shepard, *Campaign Speech: Restraint and Liberty in Judicial Ethics*, 9 GEO. J. LEGAL ETHICS 1059, 1081-90 (1996) (hereinafter cited as Shepard, *Campaign Speech*).

B. Minnesota's Clause Serves Compelling Interests in Maintaining Judicial Independence and Impartiality, Preserving Public Confidence in the Judiciary, and Guaranteeing Due Process of Law

Ensuring the independence and impartiality of the judiciary is unquestionably a compelling interest that justifies regulation of speech. *Stretton v. Disciplinary Bd.*, 944 F.2d 137, 142 (3d Cir. 1991). "[T]he principle of impartial justice under law is strong enough to entitle government to restrict the freedom of speech of participants in the judicial process." *Buckley*, 997 F.2d at 231. "A State may also properly protect the judicial process from being misjudged in the minds of the public." *Cox v. Louisiana*, 379 U.S. 559, 565 (1965).

The proscription in Minnesota's clause reflects the unique role that judges play in American governmental structure. "Judges remain different from legislators and executive officials, even when all are elected, in ways that bear on the strength of the state's interest in restricting their freedom of speech." *Buckley*, 997 F.2d at 228. "[S]tates need not treat candidates for judicial office the same as candidates for other elective offices" because "the judicial office is

different in key respects from other offices." *Am. Civil Liberties Union of Fla., Inc.*, 744 F. Supp. at 1097.

In deciding cases that come before them, judges are generally bound by controlling precedent or by statutory or constitutional provisions that may apply.[10] America's judges have historically, and properly, been distinguished from officers of the other two branches of government in this most fundamental regard: they must decide cases impartially. Judges do not represent constituencies, as do legislators and executives; and they do not make their judicial decisions with the purpose in mind of pleasing those who have elected them. That fundamental distinction between the judicial branch and the legislative and executive branches is the essence of judicial independence and impartiality, a basic element of the rule of law critical to the American system of justice.

One responsibility of the judiciary in the American experiment in democracy is to check the excesses of factions, as identified by Madison and discussed by Hamilton. *See* THE FEDERALIST No. 10 (James Madison), No. 78 (Alexander Hamilton). The fulfillment of that responsibility requires that the judiciary be able to exert its authority without fear or favor in order to ensure that its legitimacy, dependent on public perceptions of fairness and impartiality in the judicial process, remains intact. *Cf. Mistretta v. United States*, 488 U.S. 361, 407 (1989) ("The legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship.").

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10. Judges are often "confined from molar to molecular motions," being limited to deciding the cases before them with due regard for controlling precedent and legislative intent. *So. Pac. Co. v. Jensen*, 244 U.S. 205, 221 (1917) (Holmes, J., dissenting).

Permitting judicial candidates to commit or appear to commit themselves in advance on matters likely to come before their courts would create at least the appearance of partiality in the judicial decision-making process. The ultimate result would be to undermine the public's trust in the judiciary's independence and threaten the rule of law.[11] Thus, Minnesota's clause serves the state's compelling interest in preserving public confidence in the judiciary. *Cox*, 379 U.S. at 565.

A third compelling interest implicated here is the guarantee of due process of law. That constitutional guarantee would be threatened if judicial candidates were allowed to make campaign commitments about matters likely to come before their courts. *See* Shepard, *Campaign Speech* at 1083-90; *In re Bybee*, 716 N.E.2d 957, 959-60 (Ind. 1999) (per curiam).

As this Court has recognized, "[t]rial before 'an unbiased judge' is essential to due process." *Johnson v. Miss.*, 403 U.S. 212, 216 (1971) (citation omitted). Thus, in *Tumey v. Ohio*, 273 U.S. 510, 531-35 (1927), the Court held that judges may not share in the fines collected from defendants found guilty in their courts.[12] Such an interest is implicated here,

11. *Cf.* REPORT OF THE PENNSYLVANIA SPECIAL COMM'N TO LIMIT CAMPAIGN EXPENDITURES (1998); REPORT OF THE OHIO CITIZENS COMM. ON JUDICIAL ELECTIONS (1995); SUPREME COURT OF TEXAS, STATE BAR OF TEXAS & TEXAS OFFICE OF COURT ADMIN., THE COURTS AND THE LEGAL PROFESSION IN TEXAS – AN INSIDER'S PERSPECTIVE (1995) (all noting adverse impact on public perceptions of the judiciary caused by contributions to judicial campaigns).

12. *Accord Aetna Life Ins. Co. v. Lavoie*, 475 U.S. 813, 823-25 (1986) (vacating judgment that enhanced the legal claim of the justice (Cont'd)

because of a judicial candidate's personal and direct interest in gaining judicial employment.

Invalidating Minnesota's Code provision would prevent the states from making a critical distinction between the election of judges and of other elected officials. Minnesota has a compelling interest in maintaining that distinction, so as to protect the integrity of its courts, preserve public confidence in the judiciary, and guarantee due process rights to all litigants. The state's compelling interest amply justifies its narrowly tailored prohibition of statements by judicial candidates of how they would decide matters likely to come before their courts.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

ROBERT E. HIRSHON
Counsel of Record
American Bar Association
750 N. Lake Shore Drive
Chicago, IL 60611
(312) 988-5000

Counsel for Amicus Curiae

Of Counsel:

REAGAN WM. SIMPSON
WARREN S. HUANG

(Cont'd)
who authored the state court's opinion); *Ward v. Village of Monroeville*, 409 U.S. 57, 58-62 (1972) (indirect interest in city's finances was sufficient to bar mayor from serving as judge); *In re Murchison*, 349 U.S. 133, 136-39 (1955) (improper for a judge to serve as a one-person grand jury in matters that came before his court).

APPENDIX

The following states have adopted an "announce" clause substantively the same as the one in the 1972 ABA Model Code: Arizona, ARIZ. CODE OF JUD. CONDUCT Canon 5(B)(1)(d)(iv); Iowa, IOWA CODE OF JUD. CONDUCT Canon 7(B)(1)(c); Maryland, MD. CODE OF JUD. CONDUCT Canon 5(B)(5); Minnesota, MINN. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(i); Mississippi, MISS. CODE OF JUD. CONDUCT 7(B)(1)(c); and Pennsylvania, PA. CODE OF JUD. CONDUCT Canon 7(B)(1)(c).

The following states have adopted a "commit" clause substantively the same as the one in the 1990 ABA Model Code: Alaska, ALASKA CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); Arizona, ARIZ. CODE OF JUD. CONDUCT Canon 5(B)(1)(d)(ii); Arkansas, ARK. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); California, CAL. CODE OF JUD. ETHICS Canon 5(B); Florida, FLA. CODE OF JUD. CONDUCT Canon 7(A)(3)(d)(ii); Georgia, GA. CODE OF JUD. CONDUCT Canon 7(B)(1)(c); Illinois, ILL. SUP. CT. R. 67, Canon 7(A)(3)(d)(i); Indiana, IND. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); Kansas, KAN. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); Kentucky, KY. SUP. CT. R. 4.300, Canon 5(B)(1)(c); Louisiana, LA. CODE OF JUD. CONDUCT Canon 7(B)(1)(d)(ii); Maine, ME. CODE OF JUD. CONDUCT Canon 5(B)(2)(b); Nebraska, NEB. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); Nevada, NEV. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); New Mexico, N.M. CODE OF JUD. CONDUCT Rule 21-700(B)(4)(b); New York, N.Y. CODE OF JUD. CONDUCT Canon 5(A)(4)(d)(ii); North Dakota, N.D. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); Ohio, OHIO CODE OF JUD. CONDUCT Canon 7(B)(2)(d); Oklahoma, OKLA. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); Rhode Island, R.I. CODE OF JUD.

CONDUCT Canon 5(A)(3)(d)(ii); South Carolina, S.C. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); South Dakota, S.D. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); Tennessee, TENN. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); Vermont, VT. CODE OF JUD. CONDUCT Canon 5(B)(4)(b); Washington, WASH. CODE OF JUD. CONDUCT Canon 7(B)(1)(c)(ii); West Virginia, W. VA. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii); and Wyoming, WYO. CODE OF JUD. CONDUCT Canon 5(A)(3)(d)(ii).

The foilowing states use other language in restricting speech in judicial elections: Alabama, ALA. R. JUD. ETHICS Canon 7(B)(1)(c) ("A candidate for judicial office . . . shall not announce in advance the candidate's conclusions of law on pending litigation"); Colorado, COLO. CODE OF JUD. CONDUCT Canon 7(B)(1)(c) ("A judge who is a candidate for retention in office . . . should not . . . announce how the judge would rule on any case or issue that might come before the judge"); Missouri, MO. CODE OF JUD. CONDUCT Canon 5(B)(1)(c) ("A candidate, including an incumbent judge, for a judicial office . . . shall not . . . announce views on disputed legal issues"); Montana, MONT. CANONS OF JUD. ETHICS Canon 30 ("A candidate for judicial position should not make or suffer others to make for him, promises of conduct in office which appeal to the cupidity or prejudices of the appointing or electing power; he should not announce in advance his conclusions of law on disputed issues to secure class support, and he should do nothing while a candidate to create the impression that if chosen, he will administer his office with bias, partiality or improper discrimination"); New Mexico, N.M. CODE OF JUD. CONDUCT Rule 21-700(B)(4)(c) ("Candidates for election to judicial office . . . shall not . . .

announce how the candidate would rule on any case or issue that may come before the court"); Ohio, OHIO CODE OF JUD. CONDUCT Canon 7(B)(2)(e) ("A judge or judicial candidate shall not do any of the following: . . . Comment on any substantive matter relating to a specific pending case on the docket of a judge"); Texas, TEX. CODE OF JUD. CONDUCT Canon 5(1) ("A judge or judicial candidate shall not make statements that indicate an opinion on any issue that may be subject to judicial interpretation by the office which is being sought or held, except that discussion of an individual's judicial philosophy is appropriate if conducted in a manner which does not suggest to a reasonable person a probable decision on any particular case") & TEX. CODE OF JUD. CONDUCT Canon 5(2)(i) (adopting the "pledges or promises" clause but stating that "a judge or judicial candidate . . . may state a position regarding the conduct of administrative duties"); Wisconsin, WIS. SUP. CT. R. 60.06(3) ("A judge who is a candidate for judicial office shall not make or permit others to make in his or her behalf promises or suggestions of conduct in office which appeal to the cupidity or partisanship of the electing or appointing power. A judge shall not do or permit others to do in his or her behalf anything which would commit the judge or appear to commit the judge in advance with respect to any particular case or controversy or which suggests that, if elected or chosen, the judge would administer his or her office with partiality, bias or favor").

The following states have only the "pledges or promises" clause from the 1972 or 1990 ABA Model Codes: Michigan, MICH. CODE OF JUD. CONDUCT Canon 7(B)(1)(c); North Carolina, N.C. CODE OF JUD. CONDUCT Canon 7(B)(1)(c); Oregon, OR. CODE OF JUD. CONDUCT Canon JR 4-102(B); and Utah, UTAH CODE OF JUD. CONDUCT Canon 5(C)(1).